Abstract Proceedings of the Travancore Legislative Council.

The Council met again in the Dewan's room, Public offices, at 12 noon, on Friday the 14th December 1894.

PRESENT :—

The Dewan ... ... *Presiding.*

M. R. Ry. K. Krishnaswamy Rao Avergal.
M. R. Ry. V. Nagam Iyer Avergal.
M. R. Ry. P. Thanu Pillay Avergal.
M. R. Ry. Rama Vurma Avergal, Raja of Perapanad.
M. R. Ry. Ramanatha Rao Avergal.
M. R. Ry. A. M. Muthunayagom Pillay Avergal.

CIVIL PROCEDURE CODE AMENDMENT BILL.

M. R. Ry. P. Thanu Pillay moved for the suspension of the standing orders so as to allow him, in the absence of Mr. Watts, to move the amendment to the Civil Procedure Code Amendment Bill, which had been previously circulated.

The standing orders were suspended by the President and Mr. Thanu Pillay moved the following as section VI. "Insert the words "or Sripadom Palace" between the words "Government" and "shall" in "section 401 of the Civil Procedure Code." He also moved the omission of section VII of the Bill.

The Rajah of Perapanad seconded the motion.

In consequence of the above motion being carried, old section VI of the Bill becomes section VII.

The Bill as amended was passed and it was resolved that it be read again on a future day of which previous notice shall be given.

JENMI AND TENANT BILL.

The consideration of the Jenmi and Tenant Bill was then resumed.

The addition to section 5 proposed at the previous meeting was further discussed.

After the discussion Mr. Nagam Iyer said :—

"If, however, this amendment is necessary in order to uphold the decisions of courts already referred to, the earliest reported decision is, according to my friend Mr. Muthunayagom Pillay, not older than 1054 M. E. i. e. 16 years ago. I would therefore propose that 16 years be substituted for 25 years in the *amendment*. This will save the tenants who have correctly understood and acted according to the terms of the Proclamation between 1042 and 1054. These surely have not been misled by the judicial decisions of 1054 and subsequent years, if any."

The motion brought forward by Mr. Krishnaswamy Rao was put to the vote and carried by five against one.

Mr. Krishnaswamy Rao moved the omission of clause 2 of section 6.

He said :—"Even in the absence of this para the Kudiyan can, in virtue of the right conferred on him by the first para, compel the Jenmi by suit to recognise the transfer of the holding in part or whole. 'There can be no right without a remedy'."

Mr. Muthunayagom Pillay seconded the motion.

Carried.

Mr. Nagam Iyer said :—"I propose that clause 3 of section 6 be omitted altogether. The tenant and the transferee are the best judges of what their respective shares of Michavarom should be, and any settlement they may come to, with regard to apportioning of the dues on the holding, should be final, without the permission of the Jenmi. The Jenmi's interest is sufficiently protected by clause (1) of section 6, as under that clause the liability of the entire holding to the Michavarom and other dues, continues as before."

Mr. Ramanatha Rao seconded the motion.

Carried.

Mr. Nagam Iyer moved that clause (b) of section 7 (1) be omitted.

He said :—

"This section is I believe one of the most important in the Bill. The

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chief object of the Royal Proclamation of 1042 was to protect tenants from vexatious and thoughtless evictions by Jenmies. That Proclamation itself was the deliberate work of the master-minds of a previous generation of administrators—determined upon after a most careful study of the then existing conditions of the country and claiming no originality of enactment, but merely confirming the past practice of ages, on the ground that the Jenmies and tenants have behaved towards each other, as if they never meant to disturb the relationship once created between them. Only one condition was allowed by the Proclamation to alter this otherwise *permanent* relationship, and that was the non-payment by the tenant of michavarom for a whole period of 12 years. On no other condition was the title to permanent occupancy to be disturbed. We are now, by this section, creating a number of other conditions, to shake the fixity of tenure in the kanapattom property. This is tantamount to destroying the *permanency* of tenure, which has gone on for a long time past in Travancore and has been so firmly established by the Proclamation already referred to. I do not mean to say that a neglect to pay renewal fees or take a renewal lease by the tenant, should not be visited with pains and penalties, but 'eviction' is an extreme step and should not be resorted to. for so trivial a fault. There can be no objection to the Jenmy being given facilities for the realization of renewal fees or other customary dues. We should undoubtedly help to maintain intact the status of this very inoffensive and ancient landed aristocracy of Malabar, viz. the Brahmin Jenmies, but they should not be allowed to evict their tenants on this ground. We are, I fear, filing away the right of permanent occupancy in land, long ago secured to the Kanapattom tenants of Travancore. With these remarks, I propose that clause (b) of section 7 (i) be omitted."

Mr. Muthunayagom Pillay seconded the motion.

In opposing the motion Mr. Krishnaswamy Rao said :—" The object of this clause is to induce the tenants to pay up the renewal fees without recourse to litigation. A Kudiyan who neglects to pay the fees due for *six* months *even* after the service upon him of a notice in writing, should be the last man to complain of the forfeiture of the lease. A reference to section 9 of the Bill, will further show that the Courts have the power of refusing to enforce the forfeiture, if the amount due, be paid at the first hearing of the suit which the Jenmi may bring on the authority of clause (b) in section 6. The Kudiyan who fails to pay the fees even at the first hearing of the suit, does not deserve to be relieved against the forfeiture."

On the motion being put to the vote, it was lost by 4 against 3.

Mr. Muthunayagom Pillay, proposed the following 'Explanation" to clause (b) of section 7 (1) after the proviso.

" *Explanation.* Failure to pay renewal fees or take a renewal, due to *bona fide* differences between the Jenmi and the Kudiyan as to the amount of the renewal fees or as to the terms of the renewal, shall not be deemed to be 'neglect or refusal" within the meaning of clause (b)."

In seconding Mr. Muthunayagom Pillay's proposal, Mr. Thanu Pillay said :—" I yield to none in the importance I attach to the permanent occupancy right created, or, more correctly, confirmed, by the Royal Proclamation of 1042, and I am therefore naturally disinclined to support any proposal which would undermine or detract from that right. But it is equally necessary to protect the interests of the Jenmies, to whom renewal means in many cases an enhancement of the Michavarom besides the renewal fees. Clause (b) is intended to safeguard the interests of the Jenmies against unscrupulous Kudiyans who deliberately and persistently refuse to take a renewal. Such Kudiyans cannot command the sympathy of this Council. But where the failure to pay renewal fees and take a renewal is due not to any wilful neglect on the part of Kudiyans, but to differences between them and the Jenmies as to the terms of the renewal, the *raison d'etre* of the above provision ceases to exist. Hence I second Mr. Muthunayagom Pillay's amendment."

Carried.

Mr. Muthunayagom Pillay proposed to add the words "and six months after the service upon him of a notice of demand in writing under this Regulation" to the proviso to section 7.

Mr. Krishnaswamy Row seconded the motion.

Carried.

Mr. Nagam Iyer said :—

"I will also recommend to the Council the omitting of clause (c) of this sec-

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tion. It is too philosophic an idea for the work-a-day ordinary Travancore tenant. Every answer to a Jenmi's action might be construed to amount to a 'wilful denial of the Jenmi's title' the result of which will be the creation of much bad feeling between Jenmies and tenants as a whole and increase of unnecessary litigation with all its attendant evils."

Not being seconded, the motion was lost.

Mr. Nagam Iyer next proposed the omission of clause (d) of section 7 (1).

He said :—

"Gentlemen. I feel it my duty to speak strongly against this sub-clause viz. that "intentional or wilful commission of such acts of waste as are calculated to materially and permanently impair the value and utility of the holding for purposes of tenancy, and to injure the interests of the Jenmi" shall form *another* ground for eviction. This is a most unnecessary and vexatious interference with the right of the kanapattom tenant. The property has long gone from the jenmi to the hands of the tenant. The tenant looks upon it as his own, subject only to the condition of regular payment of a stipulated rent and other dues to his Jenm-lord. He has lived in it and enjoyed it for ages, without the idea occurring to him of ever being turned out of it. The feeling of loyalty for the Jenmi has grown in his mind quite independently, almost in forgetfulness, of the possibility of his being ever ousted from it. The Jenmi too has for a long while given up all thoughts of the property, submitting, so to speak, resignedly to what the law and long standing custom have made the inevitable. We are now telling him that he need not think so, that his kanapattom leases give no indefeasible right to his tenants, that he may watch the movements of his tenants and note the changes in his land from day to day. What are acts of waste and what are not should be his daily care. That is, we are now laying down, for the first time, the rule that a kanapattom property should be so managed and maintained that it may become a good and valuable one when it comes back to the Jenmi. Its coming back to the Jenmi would appear to be the sole object of the tenancy. Is this the idea with which the kanapattom leases have been entered into in the past? Is this the existing feeling of the jenmies and their hundreds of thousands of tenants in Travancore? The result will be a bad system of espionage and the worry and vexation caused to the numerous tenants of Travancore Jenmies will become considerable. By the constant interference that would thus arise, the idea of permanency in the tenure will be wholly destroyed. The character of kanapattom tenancy will be radically altered. The beneficent objects of the Royal Proclamation of 1042 will be altogether subverted. I have therefore no doubt in proposing the omission of clause (d) in this section."

Mr. Thanu Pillay seconded the motion.

He said :—"Despite the limitations implied in the words 'materially,' 'permanently' and so on, the term 'waste' is so indefinite that the provision is likely to cause constant friction between Jenmies and Kudiyans and considerable annoyance to the latter. The policy of the law being to secure to the Kudyan permanent occupancy and to the Jenmi facility to realize his dues, it is doubtful whether the extreme penalty of ouster is necessary to ensure to the Jenmi his legitimate rights. A man with permanent occupancy right is not likely to cut down valuable trees or do other acts of waste. It is suggested that he may do so in order to prevent enhancement of rent. If we bear in mind that the rent will not ordinarily exceed a fourth of the gross produce, it is unreasonable to presume that the Kudyan would kill the goose that lays the golden eggs. But even such a possibility of injury may be guarded against by the Jenmi being given the right of suing the Kudyan for damages. My chief objection is to the unnecessary multiplication of the grounds of eviction. It cannot be denied that Jenmies smart under the loss of the right which they fancy they formerly possessed of evicting their tenants at will and they (or at any rate the most grasping among them) are not likely to leave any means which would gratify their eviction appetite untried. When the act or the omission which constitutes the cause of action is definite and unambiguous, such as those referred to in clauses a, b, and c, a sensible, prudent and honest Kudyan can prevent the Jenmi rushing into court with a suit for ejectment. But as already stated, an act of waste is undefined and it is just possible that what is intended by the Kudiyan for the improvement of the property may be viewed by his sleeping, but dominant partner, as an act of waste. I am aware that section 10 would prevent unnecessary forfeiture. But all the same, clause (d) if allowed to stand will give rise to constant irritation and annoyance without an adequate compensatory benefit to the Jenmi."

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Mr. Krishnaswamy Rao opposed the motion.

He observed—"The rent payable to the Jenmi is calculated upon the number of trees in the garden. The rent is also a charge upon the trees. Under certain contingencies, the holding goes back to the Jenmi. In these circumstances, it appears to me to be incorrect to say that the Jenmi has no substantial interest in the trees. Compensation in money often fails to meet the requirements of the case. Section 10 amply protects the Kudiyn against the arbitrary exercise of the Jenmi's right."

On being put to the vote the motion was lost by a majority of 4 against 3.

Clause (d) was thus modified and adopted:— "Intentional and wilful commission of such acts of waste as are calculated to materially and permanently impair the value and utility of the holding so as to injure the interests of the Jenmi."

Mr. Ramanatha Row moved that the following be added as section 7 A.

"If the Kudayan becomes aware of any proceeding by third parties to recover the holding or any part thereof on a claim adverse to that of the Jenmi or of any encroachment made upon or any interference with the Jenmi's rights concerning such holding and he fails to give, with reasonable diligence, notice thereof to the Jenmi, he shall be liable to be evicted."

Not being seconded, the motion was lost.

The Rajah of Perapanad proposed:—In the fourth line of section 8 (1) omit "$\frac{3}{4}$ of" He said that the compensation for trees shall be not $\frac{3}{4}$ but their full market value.

Not being seconded, the motion was lost.

Mr. Nagam Iyer moved that the words "on the Jenmi to give and" in section 11 be omitted and that the words "when called upon by the Jenmi to do so" be added after the word "lease" in the same section.

He said:—

"At present the Jenmi gives a renewal of Kanapattom leases to his tenants, whenever it is convenient to him to do so and there are cases in which Jenmies have not granted renewals for 50 or 70 years or even longer terms, not on account of the refractoriness of their tenants, but owing to their own laches, due either to the fact of their having too extensive domains to manage or their unexacting nature towards their tenants, whom they delight to leave altogether undisturbed. What is wanted is to secure the ready assent of the tenant to a renewal, whenever the Jenmi wants it, after a period of 12 years. This can be best done by making it 'obligatory on the Kudiyan to accept a renewal' when the Jenmi's pleasure is intimated to him."

Mr. Ramanatha Rao seconded the motion.

The motion was lost, the result of the votes being 4 against 3.

Mr. Ramanatha Rao proposed the omission of section 12.

The Perapanad Rajah seconded the motion.

It was lost, the result of the votes being 4 against 3.

Mr. Nagam Iyer next proposed that the words "the Addukuvathu and" be omitted in section (12.)

He said:—

"The Kudiyan, at the time of eviction will be entitled to the Kanom *minus* the arrears of Michavarom and other dues, if any. He will have paid the Adukkuvathu when he entered upon the lease, as the incoming tenant after him will also do. So, he need not have to pay the Adukuvathu, at the time he is released from the kanapattom tenancy. The Adukuvathu is generally a kind of advance paid by the tenant for a prospective period of enjoyment. It is not due at the *conclusion* of a term of lease."

Mr. Ramanatha Rao seconded the motion.

Mr. Krishnaswamy Rao observed —"Adukkuvathu is not paid at the creation of the tenancy. There is a difference of opinion as to whether it is paid for a prospective enjoyment of the holding or for past enjoyment. One of the tenants, in his memorial, says that it is paid for past enjoyment. I simply wish to draw the attention of the Council to these facts. I look upon this fee, as a fee for renewal. The effect of surrender would be to deprive the Jenmi of this fee, as the incoming

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tenant will not pay it; and according to the motion before the Council, the outgoing tenant need not pay it."

The motion was carried.

Mr. Muthunayagom Pillay proposed the addition of the following words to the first para of section 12 :—" as also payment of compensation for improvements made by him or his predecessor in interest."

Mr. Nagam Iyer seconded the motion.

The motion was lost.

Mr. Krishnaswamy Rao proposed the omission of the words "minus the Adukuvathu and arrears of Michavarom and of other dues if any" in the same section, and the addition of the following sentences to the same : "In such cases, the Jenmy shall not be liable to pay to the kudiyan the value of the improvements and he shall not be bound to accept the surrender unless the whole of the arrears of Michavarom and other dues if any, are also tendered at the time of surrender." He observed :—

"It was only very recently that three out of five Judges of the High Court of Travancore on a reference to a Full Bench decided that the Kudiyan may surrender his holding. Two Judges dissented from the decision of the majority. The general impression seems to be that the right of surrender is an innovation. Under the Legislative enactments of British India relating to landlord and tenant, the tenant who surrenders his holding, could not claim the payment of the value of improvements made by him. I belive that the holders of Sircar lands in Travancore, do not get from the Sircar, the value of improvements made by them on the holdings they surrender. The effect of entitling Kudians of Jenmies to the value of improvements made by them on the holdings which they voluntarily surrender, would be to place the Jenmi entirely at the mercy of his tenants. In a particular locality, if all the tenants combine together for the purpose of obtaining more favourable terms than the law allows, they have simply to make costly improvements which now include buildings also, and call upon the Jenmi to take back the holdings paying them the value of improvements. To meet the large and sudden demands of a number of tenants would be simply impossible. A man who in good faith surrenders his holdings, will hardly have anything on the holding, for which he may claim compensation. As he has the right of mortgaging or selling his holding, it is only unsaleable or valueless holding that he will surrender to the Jenmi. Its condition could not be such as to warrant any claim for compensation for improvements. The proposal to entitle the voluntarily outgoing tenant to improvements, would in my opinion be useful only to tenants who really wish to retain the holdings but ostensibly surrender them in order to drive the Jenmi to hard bargains. Upon a consideration of all these circumstances, the Select Committee came to the conclusion that the Kudian who voluntarily surrenders a holding, should not be allowed to claim the value of improvements. I regret that they made no express provision on the point. I therefore propose that a para be added to section 12, exempting the Jenmi from liability to pay the value of improvements and authorizing him to decline to accept the surrender unless all the arrears,—whether of Michavarams or of other dues—are fully paid. These provisions will act as a check against the abuse of the concession made in favor of the Kudians."

In seconding the above amendment Mr. Thanu Pillay said :—" The law having vested in the Kudiyan permanent occupancy right and recognised in the Jenmi, as a rule, only the right of receiving rents and other dues, the justice and expediency of Section 12 itself may well be questioned. But there may be cases where it will be ruinous to the Kudiyan to retain a holding especially as no reduction or remission of Michavarom is allowable except at the time of renewal. It is to meet such cases, I take it, this section is intended. While then it is expedient to provide for such hard cases, it is equally necessary to protect Jenmies from unscrupulous Kudiyans who may make costl and foolish improvements and seek to re-imburse themselves at the cost of the Jenmies. Compensation for improvement is justly claimable only in cases of eviction by the action of the Jenmi. If the contrary principle is admitted, it will be in the power of Kudiyans to cause serious embarrassment to Jenmies."

The Rajah of Perapanad objected to this section altogether observing that to compel the poor Jenmi to take back the land and to award compensation for all

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the many improvements is to lead him to utter ruin. The Jenmies as a class are very poor.

The motion was carried.

Mr. Ramanatha Rao proposed the substitution of the following for section 13. "Arrears of Michavarom and renewal fees to the Jenmi shall be a charge on the holding of a Kudiyan and shall have priority over all other charges on the same, save arrears of tax due to Government."

Mr. Muthunayagom Pillay seconded the motion.

Carried.

Mr. Nagam Iyer proposed that the words "and with the consent of a Kudiyan" be added to section 14, after the words "Chapter III," in line 1.

He said :—"The enhancement of Michavarom by a Jenmi cannot be enforced in all cases of Kanapattom tenancy. The Proclamation of 1042 allows a Jenmi the right of readjusting the rent at the renewal of a lease only 'when such readjustment is allowed by custom.' We now propose to allow him the right of enhancing the Michavarom in all cases. This will destroy the nature of the Kanapattom tenure, which according to the present law protects the tenant from any action for ouster by Jenmies, so long as he pays 'the stipulated rent and other customary dues.' Section 14 will make Kanapattom leases like the leases between the ordinary landlords and their tenants in Travancore. I will therefore add that an enhancement of Michavarom can be made under this section only "with the consent of a Kudiyan."

Not being seconded the motion was lost.

The Council adjourned to the following day.

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